

THE COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

Middlesex Division

Docket No. 97D-4115-DV1

---

In re: Petition of Mark Cimini      )  
  )  
Mark K. Cimini                    )  
  )  
v.                                    )  
  )  
Margaret R. Cimini              )

---

Decree on Petition for Writ of Habeas Corpus  
(filed September 22, 2004)

This matter came before the Court (Donnelly, J.) on September 22, 2004, ex parte. The Petitioner, who is pro se, filed the Petition, but did not seek an immediate hearing, citing his belief that a hearing is required within 72 hours.

After careful review of the pleading, the Petition for Writ of Habeas Corpus filed by Mark Cimini ("the Father") is **DISMISSED** without a hearing for failure to state a claim upon which relief may be granted.

The Court further enters the following:

Discussion

An individual may obtain a writ of habeas corpus, in the family law context, pursuant to Massachusetts General Laws c. 208, § 32, c. 248, § 35, and the Constitution of the Commonwealth of Massachusetts Part 2, Chapter 6, Article 7, which provide that a Probate and Family Court of the Commonwealth may issue a writ of habeas corpus in an action of which it has jurisdiction because of a divorce. M.G.L. c. 208, § 32. A parent whose minor child is being held

against the will of that parent, or another individual entitled to custody, without due process of law may file a petition for the writ. M.G.L. c. 248, § 35. That parent may file that petition against the person who is holding the child with no legal right to do so. *See Stinson v. Meegan*, 318 Mass. 459 (1945).

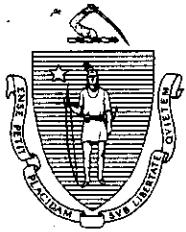
In Massachusetts, both parents are equally entitled to custody and are obligated to pay support of their minor children under both case law and statutory law. *See* M.G.L. c. 208, § 31; *See also Sagar v. Sagar*, 57 Mass.App.Ct. 71 (2003); *Rolde v. Rolde*, 12 Mass.App.Ct. 398 (1980); *Donnelly v. Donnelly*, 4 Mass.App.Ct. 162 (1976). Cf. *Blixt v. Blixt*, 437 Mass. 649 (2002). Further, there is no statutory or constitutional entitlement to any sort of custody arrangement in disputes between parents. *Opinion of the Justices to the Senate*, 427 Mass. 1201, 1204 (1998)(citing *Commonwealth v. Beals*, 405 Mass. 550, 554 (1989); *Yannas v. Frondistou-Yannas*, 395 Mass. 704, 708 (1985)). Cf. *Richards v. Forrest*, 278 Mass. 547 (1932). The Father presents a lengthy recitation of 18<sup>th</sup> and 19<sup>th</sup> century common law regarding the presumptive right of the father to his minor children. However, the common law presumption has never been the absolute rule in the Commonwealth of Massachusetts. *See Haskell v. Haskell*, 152 Mass. 16 (1890); Cf. *Aberlin v. Zisman*, 244 F.2d 620 (1<sup>st</sup> Cir. MA 1957). Compare *Ridgeway v. Cels*, 350 Mass. 274 (1966) and the respective rights of parents have been altered by both statutory and case law.

In the absence of a court order, Margaret Cimini ("the Mother") has the same right as the Father to the custody of the Parties' minor son. Further, pursuant to the Parties' Separation Agreement filed January 3, 2000 and the Judgment Nisi which incorporated that Agreement by reference, the parents have joint legal custody of the child with the primary residence of the child to be with the Mother. The Mother has a legal right to the physical custody of the minor child. The minor child is not illegally detained by his Mother inasmuch as she has physical custody.

9/23/04

Date

*Edward F. Donnelly Jr.*  
Edward F. Donnelly, Justice  
Probate and Family Court Dept.



The Commonwealth of Massachusetts  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
ONE BEACON STREET, 4TH FLOOR  
BOSTON, MASSACHUSETTS 02108  
[WWW.SJCCOUNTYCLERK.COM](http://WWW.SJCCOUNTYCLERK.COM)

MAURA S. DOYLE

CLERK

CASE INFO (617) 557-1100

BAR INFO (617) 557-1050

FAX (617) 557-1186

Mark Cimini

12 Maple Road

Westford, MA 01886

ASSISTANT CLERKS

LILLIAN C. ANDRUSZKIEWICZ (617) 557-1184

GEORGE E. SLYVA (617) 557-1185

ERIC B. WETZEL (617) 557-1186

FAX (617) 557-1033

December 15, 2004

RE: No. SJ-2004-0462

MARGARET CIMINI

vs.

MARK CIMINI

Middlesex Probate Court

No. 97D4115

NOTICE OF DOCKET ENTRY

You are hereby notified that on December 15, 2004, the following was entered on the docket of the above referenced case:

ORDER: ..."This matter came before the court on a request for reconsideration, and upon consideration thereof, it is ORDERED that the request be, and the same hereby is, denied." (Ireland, J.)

A handwritten signature in black ink, appearing to read "Maury S. Doyle". Below the signature, the name "Maury S. Doyle, Clerk" is printed in a smaller, sans-serif font.

To: Mark Cimini  
Margaret Cimini  
Middlesex Probate and Family Ct.

RECEIVED - MARK C. DOYLE

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2004-0462

Middlesex Probate Court  
No. 97D4115

**MARGARET CIMINI**

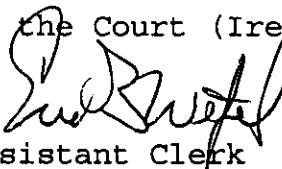
**vs.**

**MARK CIMINI**

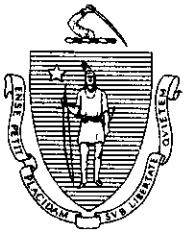
**ORDER**

This matter came before the court on a request for re-consideration, and upon consideration thereof, it is ORDERED that the request be, and the same hereby is, denied.

By the Court (Ireland, J.),

  
Sue Ireland  
Assistant Clerk

ENTERED: December 15, 2004



The Commonwealth of Massachusetts  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
ONE BEACON STREET, 4TH FLOOR  
BOSTON, MASSACHUSETTS 02108  
WWW.SJCCOUNTYCLERK.COM

MAURA S. DOYLE  
CLERK

CASE INFO (617) 557-1100  
BAR INFO (617) 557-1050

Mark Cimini 140

12 Maple Road  
Westford, MA 01886

ASSISTANT CLERKS

LILLIAN C. ANDRUSZKIEWICZ (617) 557-1184  
GEORGE E. SLYVA (617) 557-1185  
ERIC B. WETZEL (617) 557-1186  
FAX (617) 557-1033

November 24, 2004

RE: No. SJ-2004-0462

MARGARET CIMINI  
vs.  
MARK CIMINI

Middlesex Probate Court  
No. 97D4115

NOTICE OF DOCKET ENTRY

You are hereby notified that on November 24, 2004, the following was entered on the docket of the above referenced case:

JUDGMENT: "...it is ORDERED that the petition and all included motions be, and the same hereby are, denied without hearing." (Ireland, J.)

A handwritten signature in black ink, appearing to read "Maura S. Doyle".

Maura S. Doyle, Clerk

To: Mark Cimini  
Margaret Cimini  
Middlesex Probate and Family Ct.

A copy of this document may be obtained from the Clerk's Office at (617) 557-1100.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2004-0462

Middlesex Probate Court  
No. 97D4115

**MARGARET CIMINI**

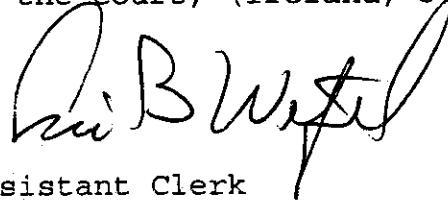
**vs.**

**MARK CIMINI**

**JUDGMENT**

This matter came before the Court, Ireland, J., presiding, on a petition filed by Mark Cimini to appeal the decision of the Middlesex Probate Court dismissing a Petition for Writ of Habeas Corpus. Upon consideration thereof, it is ORDERED that the petition and all included motions be, and the same hereby are, denied without hearing.

By the Court, (Ireland, J.)



Assistant Clerk

Entered: November 24, 2004